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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**



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DATE: **NOV 16 2011**

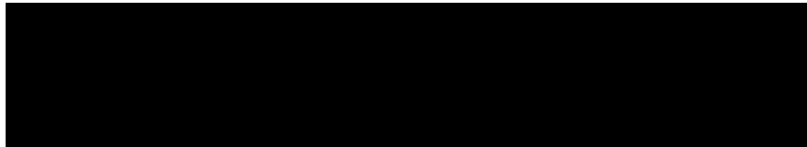
OFFICE: CALIFORNIA SERVICE CENTER FILE: 

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the petition for a nonimmigrant visa. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be sustained.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a [REDACTED] corporation, states that it is engaged in the import, wholesale and retail of garments. The petitioner claims to be a subsidiary of [REDACTED], located in the [REDACTED]. The petitioner seeks to employ the beneficiary as its Sales/Marketing Manager for a period of one year to open a new office in the United States.

The director denied the petition on September 28, 2009, concluding that the record contains insufficient evidence to demonstrate: (1) that the beneficiary was employed by the foreign company in a primarily executive or managerial capacity; and, (2) that the beneficiary will be employed in a managerial or executive capacity at the U.S. entity.

Counsel for the petitioner timely filed an appeal on October 28, 2009. On appeal, counsel for the petitioner states that the beneficiary is employed in a managerial capacity and asserts the director erred by denying the petition. Counsel for the petitioner contends that the petitioner submitted a specific and detailed description of the duties performed by the beneficiary and the duties that the beneficiary will perform in the United States.

To establish eligibility under section 101(a)(15)(L) of the Act, the petitioner must meet certain criteria. Specifically, within three years preceding the beneficiary's application for admission into the United States, a firm, corporation, or other legal entity, or an affiliate or subsidiary thereof, must have employed the beneficiary for one continuous year. Furthermore, the beneficiary must seek to enter the United States temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate thereof in a managerial, executive, or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) further states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.

- (iii) Evidence that the alien has at least one continuous year of full time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training, and employment qualifies him/her to perform the intended services in the United States; however, the work in the United States need not be the same work which the alien performed abroad.

The first issue to be addressed in this proceeding is whether the beneficiary was employed by the foreign company in a primarily managerial or executive capacity.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily-

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and
- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily-

- (i) directs the management of the organization or a major component or function of the organization;

- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

Upon review of the record, the AAO withdraws the director's decision and sustains the appeal. In the response to the director's request for evidence, counsel for the petitioner explained that the foreign company employs 321 employees and the beneficiary is "in charge of the company's Sales Department overseeing overall sales of the parent company's organization." Counsel also provided a detailed job description of the beneficiary's duties at the foreign company and a breakdown of time spent on each duty. Counsel also provided a description of duties performed by the beneficiary on a daily basis for the six months prior to filing the instant petition.

In addition, the petitioner submitted an organizational chart of the foreign company showing that the beneficiary supervises the Sales Department Manager Assistant, and supervises the Self-Operation Department and the Franchise Department. The positions in those two departments include the Self-Operation Department Manager and Assistant Manager, and the Regional Superintendent Departments, and the Franchise Department Manager and the Franchise Department Regional Superintendents. According to the organizational chart, the beneficiary supervised fifteen employees directly. The petitioner provided a description of the job duties of the positions supervised by the beneficiary. In addition, the petitioner provided a chart for each individual supervised by the beneficiary that indicated their salary and education; all of the employees supervised by the beneficiary obtained a college degree. According to the documentation submitted by the petitioner, it appears that the beneficiary was supervising professional employees at the foreign company who relieved her from performing primarily non-qualifying duties.

The second issue to be addressed in this proceeding is whether the petitioner has established that the beneficiary would be employed in a primarily managerial or executive capacity within one year of the approval of the petition, as required by 8 C.F.R. § 214.2(l)(3)(v)(C).

When a new business is established and commences operations, the regulations recognize that a designated manager or executive responsible for setting up operations will be engaged in a variety of activities not normally performed by employees at the executive or managerial level and that often the full range of managerial responsibility cannot be performed. In order to qualify for L-1 nonimmigrant classification during the first year of operations, the regulations require the petitioner to disclose the business plans and the size of the United States investment, and thereby establish that the proposed enterprise will support an executive or managerial position within one year of the approval of the petition. *See* 8 C.F.R. § 214.2(l)(3)(v)(C). This evidence should demonstrate a realistic expectation that the enterprise will succeed and rapidly expand as it moves away from the developmental stage to full operations, where there would be an actual need for a manager or executive who will primarily perform qualifying duties.

Upon review of the record, the AAO withdraws the director's decision and sustains the appeal. In the response to the director's request for evidence, counsel for the petitioner contends that the petitioner's "goal is to expand the operations of the parent company by importing underwear, swimwear, and sleepwear from China and to sell them in the wholesale and retail markets, as well as to establish company owned stores." Counsel submitted a detailed description of the duties to be performed by the beneficiary in order to start up the operations in the United States. The petitioner explained that the beneficiary will initially hire a wholesale division manager and a marketing research supervisor. The petitioner submitted two declarations from the individuals that will fill these two positions stating that they have accepted the proposed positions and will begin employment when the beneficiary commences her employment with the petitioner. The petitioner also submitted a proposed organizational chart that includes additional positions such as sales representative, marketing assistant, advertisement specialist, retail store manager, supervisor and clerks.

The petitioner submitted evidence of an investment from the parent company's majority shareholder to the petitioner as capital to start operations. The petitioner explained that the inventory sold by the petitioner will be supplied by the parent company. In addition, the petitioner submitted a lease agreement between the petitioner and [REDACTED] for office space for the new office for a term of three years, commencing on December 1, 2008. Furthermore, the petitioner submitted a business plan for the petitioner which included information about the petitioner's management, products, investment capital, and objectives for the first five years in operation.

According to the documentation in the record, it appears that the petitioner established that beneficiary has been and would be employed in a primarily managerial or executive capacity.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met. Accordingly, the appeal will be sustained.

ORDER: The appeal is sustained.